

No. 16215 ✓

United States
Court of Appeals
for the Ninth Circuit

LESLIE M. SIBERELL, on Behalf of Himself
and His Co-defendants, OLIVER D. SIBE-
RELL, JAMES P. SIBERELL, MARTHA
E. JONES, DAISY M. BISHOP, and
MABEL ROBSON,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Appeal from the United States District Court for the
Southern District of California
Central Division

FILED

JAN 29 1958

PAUL P. O'BRIEN; CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

For Appellants:

J. B. TIETZ,
257 So. Spring Street,
Los Angeles 12, California.

For Appellee:

LAUGHLIN E. WATERS,
United States Attorney;

HERBERT M. WEISER,
Assistant U. S. Attorney,
821 Federal Building,
Los Angeles 12, California.

United States District Court, Southern District
of California, Central Division
No. 3472-WB Civil

UNITED STATES OF AMERICA,

Plaintiff,

vs.

529,533 ACRES OF LAND, MORE OR LESS, IN
THE COUNTIES OF INYO, KERN and
SAN BERNARDINO, STATE OF CALI-
FORNIA; and UNKNOWN OWNERS,

Defendants.

AMENDMENT TO THIRD AMENDED
COMPLAINT IN CONDEMNATION

Comes Now the plaintiff United States of Amer-
ica, by Laughlin E. Waters, United States At-
torney, and Ashley Stewart Orr, Assistant U. S.
Attorney, and in accordance with Rule 71A, Fed-
eral Rules of Civil Procedure, hereby amends the
Third Amended Complaint in Condemnation on file
herein by adding the following defendants to the
action: * * * Minnie V. Liberell.

Dated: April 16, 1956.

LAUGHLIN E. WATERS,
United States Attorney;
ASHLEY STEWART ORR,
Assistant U. S. Attorney,

By /s/ ASHLEY STEWART ORR,
Attorneys for Plaintiff.

[Endorsed]: Filed April 19, 1956.

[Title of District Court and Cause.]

CERTIFICATE FOR SERVICE
BY PUBLICATION

Ashley Stewart Orr, Assistant U. S. Attorney, one of the attorneys for plaintiff in the above-entitled action, hereby certifies that he believes the hereinafter named defendants cannot be personally served because, after diligent inquiry within the states in which this action is pending the places of residence of said defendants cannot be ascertained by plaintiff, or, if ascertained, the places of residence of said defendants are beyond the territorial limits of personal service as provided in Rule 71A, Federal Rules of Civil Procedure: * * * Minnie V. Liberell * * *

Dated: April 16, 1956.

LAUGHLIN E. WATERS,
United States Attorney;
ASHLEY STEWART ORR,
Assistant U. S. Attorney;

By /s/ ASHLEY STEWART ORR,
Attorneys for Plaintiff.

[Endorsed]: Filed April 19, 1956.

[Title of District Court and Cause.]

CERTIFICATE OF PUBLICATION
AND MAILING

Ashley Stewart Orr, one of the attorneys for plaintiff in the above-entitled action, hereby certifies

that he caused the publication once a week for three (3) consecutive weeks in the San Bernardino Evening Telegram and The Evening Index of the Notice, a printed copy of which, with the name of the newspaper and dates of publication marked thereon, is attached to the Affidavit of Publication attached hereto, and that he caused a copy thereof to be mailed to the defendants named therein at their last known places of residence.

Dated: May 22, 1956.

LAUGHLIN E. WATERS,
United States Attorney;
ASHLEY STEWART ORR,
Assistant U. S. Attorney;

By /s/ ASHLEY STEWART ORR,
Attorneys for Plaintiff.

AFFIDAVIT OF PUBLICATION

U. S. Department of Justice

State of California,
County of San Bernardino—ss.

The undersigned affiant, being duly sworn, deposes and says:

That I now am and at all times herein mentioned was a citizen of the United States, over the age of twenty-one years, and not a party to nor interested in the above-entitled matter; that I am the principal clerk of the printer and publisher of a newspaper,

to wit, San Bernardino Evening Telegram and The Evening Index; that the same was at all times herein mentioned a newspaper of general circulation printed and published daily, except Sunday, in the City of San Bernardino, in the County of San Bernardino, State of California; that said newspaper has been adjudged a newspaper of general circulation by the Superior Court of the State of California, in and for the County of San Bernardino, by a judgment of said Superior Court duly made, filed and entered on June 20, 1952, in the records and files of said Superior Court in that certain proceeding entitled In the Matter of the Ascertainment and Establishment of "San Bernardino Evening Telegram and The Evening Index" as a Newspaper of General Circulation, numbered 73082 in the records of civil proceedings in said Superior Court; that said judgment has not been amended or set aside and was in full force and effect at all times therein mentioned; that the notice or other process or document hereinafter mentioned was set, printed and published in type not smaller than nonpareil and was preceded with words printed in black face type not smaller than nonpareil describing and expressing in general terms the purport or character of the notice intended to be given; that the Notice of Filing Complaint in Condemnation, Amended Complaints in Condemnation, and Amendment to Third Amended Complaint in Condemnation, Civil No. 3472-WB of which the annexed is a true printed copy was published in each edition and issue of said newspaper, and not in any supplement thereof, on

each of the following dates, to wit: April 23, 30; May 7, all in the year 1956.

[Seal] /s/ BILLIE WATTENBARGER.

Subscribed and sworn to before me this 7th day of May, 1956.

 /s/ LLOYD M. CAREY,
Notary Public in and for the County of San Bernardino, State of California.

[Endorsed]: Filed May 22, 1956.

[Title of District Court and Cause.]

AFFIDAVIT OF MAILING

State of California,
County of Los Angeles—ss.

Lillian K. Perkins, being first duly sworn, deposes and says:

That she is a citizen of the United States and a resident of Los Angeles County, California; that her business address is 821 Federal Building, Los Angeles 12, California; that she is over the age of eighteen years, and not a party to the above-entitled action;

That on October 22, 1957, she deposited in the United States mails in the post office at Temple and Main Streets, Los Angeles, California, in the above-entitled action, in an envelope bearing the requisite postage, a copy of Findings of Fact, Conclusions of

Law, and Judgment and Decree Fixing Compensation and Determining Absence of Interest of Certain Parties as to Parcels 4, 26, 37, 51, 60, 92, 94, 96, 108, 150, 160A, 170, 171, 200, 206, 207, 208, 209A, 210, 230, 245, 252, 275, 302, 324, 335, and 336, in Kern County; 263, 269, 272, 277, 279, 280, 286, 417, 418, 458, 459, 460, 461, 462, 488, 489, 499, 500, 501, 554, 555, 556, 557, 558, 559, 560, and 561 in Inyo County; and 412, 467, 477, 478, 479, 480, 481, and 509 in San Bernardino County, addressed to the parties listed on the attached Schedule "A," at which places there is delivery service by United States mail from said post office.

/s/ LILLIAN K. PERKINS.

Subscribed and sworn to before me this 22nd day of October, 1957.

JOHN A. CHILDRESS,

Clerk United States District Court, Southern District of California.

[Seal] /s/ IRWIN YOUNG,
Deputy.

Schedule "A"

Leslie M. Siberell,
6162 Annan Way,
Los Angeles 42, Calif.

[Endorsed]: Filed October 22, 1957.

United States District Court, Southern District of
California, Central Division

No. 3472-WB Civil

UNITED STATES OF AMERICA,

Plaintiff,

vs.

529,533 ACRES OF LAND, MORE OR LESS, IN
THE COUNTIES OF INYO, KERN AND
SAN BERNARDINO, etc., et al.,

Defendants.

FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND JUDGMENT AND DECREE
FIXING COMPENSATION AND DETER-
MINING ABSENCE OF INTEREST OF
CERTAIN PARTIES

As to Parcels

* * *

481 (Bird's Eye Porphyry Lode), and

509 (Red S. Lode), in San Bernardino County.

The above-entitled matter came on for hearing before the United States District Court, Southern District of California, Central Division, the Honorable William M. Byrne, Judge of the above-entitled court, presiding, sitting without a jury, in Courtroom No. 3, in the United States Post Office and Court House Building, Los Angeles, California, commencing at 2:00 p.m., July 22, 1957, and continuing through July 23, 1957, this being the time and

place as fixed by the Court for the determination of just compensation payable by the plaintiff for the real properties and premises herein and in these proceedings designated, described and referred to as Parcels 280, 335, 336, 412 (Liberty Lode); 481 (Bird's Eye Porphyry Lode); 488 (Iron Chief Lode); 489 (Iron Mask Lode); 500 (White Pumice No. 2 Placer); 554, 555, 556, and 557 (Noll No. 1 to No. 4, inclusive, Placer); and 558, 559, 560, and 561 (Mary Lea Lode Nos. 1 to 4, inclusive);

* * *

It appearing that the following defendants, and unknown owners not appearing herein, except those appearing at this hearing, hereinabove referred to, as to the parcels herein set forth, were served in this action, as follows:

* * *

R. L. Steven, Ray L. Steven, Raymond L. Steven, Louie R. Osborne, Louis R. Osborne, C. M. Christensen, and Minnie V. Liberell, as to Parcel 481 (Bird's Eye Porphyry Lode);

* * *

It appearing to the Court that said defendants have been duly and regularly served with notice of filing of the Complaint in Condemnation, as amended, and with notice of this hearing, and that said defendants have, and each of them has, failed to appear herein, and the time by which they could by law appear herein having elapsed; witnesses on behalf of the plaintiff having been called, and the Court having considered the testimony of the wit-

nesses and the statements of plaintiff's counsel as to title; the Court being fully advised in the premises, now makes the following:

Findings of Fact

* * *

(ff) The defendants Raymond L. Steven (also known as Ray L. Steven and R. L. Steven), Louis R. Osborne (also known as Louie R. Osborne), C. M. Christensen, and Minnie V. Siberell (sued as Minnie V. Liberell), have an interest in Parcel 481 (Bird's Eye Porphyry Lode), and said defendants are entitled to the just compensation awarded for the taking of said parcel. No other persons have any interest or any right to the compensation awarded for the condemnation and taking of said parcel and shall take nothing in this action.

* * *

V.

The fair market value for each of the parcels hereinafter set forth was, on February 24, 1944, the date of the filing of the Order of Immediate Possession in this action, as follows:

Parcel No.	Fair Market Value
* * *	
481	
(Bird's Eye Porphyry Lode)	\$100.00
* * *	

Wherefore, based upon the foregoing Findings of Fact, the Court makes the following:

Conclusions of Law

I.

That upon the filing of the plaintiff's Complaint in Condemnation on February 23, 1944, and the entry of an Order of Immediate Possession on February 24, 1944, plaintiff acquired title and interest in and to the several parcels of real property herein referred to as Parcels * * * 481 (Bird's Eye Porphyry Lode), * * *

IV.

That upon the filing of this judgment and decree, the right to just compensation for said parcels of real property herein described and referred to as Parcels 412 (Liberty Lode), 481 (Bird's Eye Porphyry Lode), 488 (Iron Chief Lode), 489 (Iron Mask Lode), 500 (White Pumice No. 2 Placer), 554, 555, 556 and 557 (Noll No. 1 to No. 4, inclusive, Placer), and 558, 559, 560 and 561 (Mary Lea Lode Nos. 1 to 4, inclusive), became and was vested in the following-named defendants, in the following amounts, respectively:

Parcel	Name	Amount
481	* * *	

(Bird's Eye Porphyry Lode)—Raymond L. Steven (aka Ray L. Steven and R. L. Steven), Louis R. Osborne (aka Louie R. Osborne), C. M. Christensen, and Minnie V. Siberell (sued as Minnie V. Liberell), \$100.00.

* * *

Judgment

Wherefore, based upon the above and foregoing Findings of Fact and Conclusions of Law, it is hereby Ordered, Adjudged and Decreed by this Court:

I.

That on February 23, 1944, there was filed by the plaintiff, United States of America, its Complaint in Condemnation, as subsequently amended; that on February 24, 1944, the plaintiff, United States of America, was granted the right of immediate possession in and to those certain parcels, as to the estates and interests described in its Complaint in Condemnation, as amended, and in its declarations of taking, on file herein, set forth as follows:

* * *

481 (Bird's Eye Porphyry Lode), and

* * *

II.

That the following-named defendants have judgement, respectively, against the United States of America, in the following sums, together with interest thereon at the rate of 6 per cent per annum from February 24, 1944, to and including the date of deposit of said funds into the Registry of this Court:

Parcel	Vestee	Amount of Award
--------	--------	-----------------

* * *

481 (Bird's Eye Porphyry Lode)—Raymond L. Steven (aka Ray L. Steven and R. L. Steven),

Louis R. Osborne (aka Louie R. Osborne), C. M. Christensen, and Minnie V. Siberell (sued as Minnie V. Liberell), \$100.00.

* * *

IX.

That the plaintiff has the legal right to take and acquire the real property for the estates and for the purposes set forth in its Complaint in Condemnation, as amended, and in its declarations of taking, on file herein.

The Court hereby retains jurisdiction to make and enter such further orders and judgments which may be necessary and proper in the premises.

Dated: October 31, 1957.

/s/ WM. M. BYRNE,

United States District Judge.

Presented by:

LAUGHLIN E. WATERS,
United States Attorney;

JOSEPH F. McPHERSON,
Assistant U. S. Attorney;

By /s/ JOSEPH F. McPHERSON,
Attorneys for Plaintiff,
United States of America.

Lodged: October 22, 1957.

[Endorsed]: Filed and entered November 1, 1957.
1957.

United States District Court, Southern District
of California, Central Division

Civil No. 3472-WB

UNITED STATES OF AMERICA,

Plaintiff,

vs.

529,533 ACRES OF LAND, MORE OR LESS, IN
THE COUNTIES OF INYO, KERN AND
SAN BERNARDINO, etc., et al.,

Defendants.

ANSWER TO DEFENDANTS' MOTION TO VA-
CATE AND AFFIDAVIT IN SUPPORT
THEREOF

(As to Parcel 481)

Comes Now plaintiff, United States of America,
by its attorneys of record, Laughlin E. Waters,
United States Attorney, by Herbert M. Weiser, As-
sistant United States Attorney, and respectfully
represents to the court:

That the files on record of this cause reveal that
on October 22, 1957, a copy of the Findings of Fact
and Conclusions of Law and Judgment and Decree
fixing compensation and determining the absence of
interests of certain parties was lodged with this
Honorable Court and that on that same date a copy
thereof was mailed to Mr. Leslie M. Siberell, 6162
Annan Way, Los Angeles 42, California, all as ap-
pears in the Affidavit of Mailing, filed October 22,
1957.

Plaintiff further represents that letters and documents in the file maintained by plaintiff indicate that defendant, Leslie M. Siberell, was in possession of knowledge of the substance of this matter and was in correspondence with the United States Attorney's office on these matters as early as August 26, 1957, all as appears in plaintiff's affidavit below.

Wherefore, plaintiff prays that defendant's motion to vacate judgment be denied.

Dated: This 2nd day of April, 1958.

LAUGHLIN E. WATERS,
United States Attorney;

HERBERT M. WEISER,
Assistant U. S. Attorney;

By /s/ HERBERT M. WEISER,
Attorneys for Plaintiff.

Affidavit of Herbert M. Weiser in Support of
Plaintiff's Answer to Motion

County of Los Angeles,
State of California—ss.

Herbert M. Weiser, being first duly sworn, deposes and says:

1. That he is the Assistant United States Attorney in possession of plaintiff's files with reference to Parcel 481 in Civil No. 3472-WB.

2. That there is contained in this file the following correspondence.

(a) A letter signed by Leslie M. Siberell, 6162 Annan Way, Los Angeles 42, California, addressed to Mr. McPherson, 821 Federal Building, 312 N. Spring Street, Los Angeles, California, dated August 26, 1957.

(b) A carbon copy of a letter dated August 26, 1957, from Joseph F. McPherson, Assistant U. S. Attorney, to Mr. Leslie M. Siberell, 6162 Annan Way, Los Angeles 42, California.

(c) A carbon copy of a letter dated September 17, 1957, from Joseph F. McPherson, Assistant U. S. Attorney, to Mr. Leslie M. Siberell.

(d) Carbon copy of a letter dated October 21, 1957, from L. G. Lewis, Lieutenant Commander, USN, addressed to Mr. Leslie M. Siberell.

(e) Carbon copy of a letter dated December 12, 1957, from Laughlin E. Waters, United States Attorney, addressed to Commandant, Eleventh Naval District, San Diego 32, California.

Dated: This 3rd day of April, 1958.

/s/ HERBERT M. WEISER,
Assistant U. S. Attorney.

Sworn to and Subscribed before me this 3rd day of April, 1958.

[Seal] /s/ MARGARET M. COLLINS,
Notary Public in and for Said
County and State.

My Commission Expires February 25, 1961.

26 August, 1957.

Mr. McPherson,
821 Federal Bldg.,
312 N. Spring Street,
Los Angeles, California.

Lands Division of the Justice
Dept. of the U. S. Government.

Dear Sir:

Re: Our telephone conversation pertaining to
the Bird's Eye Porphyry Claim No. 481.

Enclosed please find certified photostatic copy of
order settling final account and for distribution of
the assets, (In the Matter of the Estate of Minnie
V. Siberell, deceased).

Please return this photostatic copy to me when
you have obtained your copy of same.

Also I am sending you a copy of the certified
photostatic copy of sale of Mining Claim which you
may keep for your file if you so desire.

If you will send me the forms that we discussed
Re: the relinquishment of interest by Mr. Lou Os-
borne, 316 E. 186th St., Los Angeles, I will sincerely
endeavor to obtain his signature.

Yours very truly,

/s/ LESLIE M. SIBERELL,
6162 Annan Way,
Los Angeles, 42 California.

[Stamped]: Received, Aug. 28, 1957. U. S. Atty.-
Lands Division, Los Angeles, California.

August 26, 1957.

Mr. Leslie M. Siberell,
6162 Annan Way,
Los Angeles 42, California.

Re: Civil No. 3472-WB, Parcel 481
(Bird's Eye Porphyry Lode.)

Dear Mr. Siberell:

In accordance with today's telephone conversation, enclosed are disclaimers for execution by Raymond L. Steven and Louis R. Osborne, the originals of which should be signed by said persons and returned to this office. The carbon copies are for their file.

Upon receipt of the signed disclaimers and a certified copy of Decree of Distribution of the Estate of Minnie V. Siberell, this office will cause an order for distribution to be entered in this action for payment to be made to you of the amount due for the taking of Parcel 481. The amount due, \$100.00, plus interest, must be obtained from the acquiring agency, which will require approximately six weeks.

The enclosed self-addressed envelope, requiring no postage, may be used for forwarding the above-referenced documents to this office.

Very truly yours,

LAUGHLIN E. WATERS,
United States Attorney;
JOSEPH F. McPHERSON,
Assistant U. S. Attorney.

September 17, 1957.

Mr. Leslie M. Siberell,
6162 Annan Way,
Los Angeles 42, California.

Re: Civil No. 3472-WB, Parcel 481
(Bird's Eye Porphyry Lode Mining
Claim).

Dear Mr. Siberell:

The record owners of the above mining claim are Raymond L. Steven (who has disclaimed), Louis R. Osborne, C. M. Christensen and Minnie V. Siberell, your mother.

The Bird's Eye Porphyry Lode Mining Claim is located approximately in Section 27, Township 25 South, Range 42 East (unsurveyed). The appraiser employed by the Government indicated that it is located in the rough granite hills toward the south edge of the South Argus Range, at an elevation of about 3500 feet, about 3½ miles west from Searles Lake, and accessible by primitive road about ten miles from Salt Wells. A map showing the location of the mine is attached.

Very truly yours,

LAUGHLIN E. WATERS,
United States Attorney;

JOSEPH F. McPHERSON,
Assistant U. S. Attorney.

cc: Commander,
Naval Ordnance Test Station,
Inyokern, California,
(with copy of map).

U. S. Naval Ordnance Test Station
China Lake, California

Mr. Leslie M. Siberell,
6162 Annan Way,
Los Angeles 42, California.

Dear Mr. Siberell:

We are in receipt of your letter of 13 September, 1957, giving us the location of Parcel No. 481 (Bird's Eye Porphyry Lode Mining Claim).

We have inspected your claim which due to tests being conducted in the immediate vicinity is only accessible by helicopter. Due to the nature of these tests, it is not possible to take personnel into this area to inspect property at present, and there is a possibility that this area cannot be entered until about July, 1958.

We deeply regret that this reply to your inquiry cannot be favorable, but trust you will understand that this action is in the interest of your own safety and the security of this activity. If there is any way in which we can be of further help to you, we shall be glad to do so.

Leslie M. Siberell, etc., et al., vs.

Sincerely yours,

L. G. LEWIS,

Lieutenant Commander, USN, Security Officer. By
direction of the Commander.

cc: Joseph F. McPherson,
Assistant U. S. Attorney.

[Stamped]: Received Oct. 23, 1957. U. S. Atty.-
Lands Division, Los Angeles, California.

December 12, 1957.

Commandant,
Eleventh Naval District,
San Diego 32, California.

Re: Civil No. 3472-WB, Parcel 481—Bird's
Eye Porphyry Lode Mining Claim.

Dear Sir:

On October 24, we addressed the Commander of the U. S. Naval Ordnance Test Station at China Lake, California, to the effect that one Leslie M. Siberell, one of the owners of the Bird's Eye Porphyry Lode Mining Claim, a portion of the property being acquired by the United States, had requested an opportunity to have access to the claim in order to sample it and to appraise its value.

We informed the Commander that, under the law, the former owner has this right, and we asked whether or not it would be possible to give access to Mr. Siberell on either a Saturday, a Sunday or a

iday. To date we have not had the courtesy of a
ly. Mr. Siberell is pressing us for an answer, and
shall appreciate any assistance you can render

Very truly yours,

LAUGHLIN E. WATERS,
United States Attorney.

Commander,
U. S. Naval Ordnance Test Station,
China Lake, California.
(Attention: L. G. Lewis, Lt. Comdr., Sec.
Officer.)

Leslie M. Siberell,
6162 Annan Way,
Los Angeles 42, California.

ffidavit of Service by Mail attached.

Endorsed]: Filed April 3, 1958.

le of District Court and Cause.]

NOTICE OF MOTION

Laughlin E. Waters, United States Attorney,
and Lou R. Osborne, 316 East 186 Street,
Gardena, Los Angeles, California.

ou will please take notice that defendant, Leslie
Siberell, will move the Court for an order par-
ay vacating the judgment heretofore rendered in
above cause, namely, the portion that concerns

the defendant and his brothers and sisters (Parcel 481), relieving them from default and permitting them to file an answer and have their day in court on the matter of the valuation of said Parcel 481 in Courtroom No. 3 on May 26, 1958, at 9:45 a.m. or as soon thereafter as counsel may be heard.

Defendant will rely on the file in the above-entitled cause and on the Motion and Affidavits attached hereto.

/s/ J. B. TIETZ,

Attorney for Defendants.

[Title of District Court and Cause.]

MOTION TO VACATE JUDGMENT AGAINST
CERTAIN DEFENDANTS NOT NOTIFIED
OF ACTION

Leslie M. Siberell, defendant, on behalf of himself and his brothers and sisters, Oliver D. Siberell, James P. Siberell, Martha E. Jones, Daisy M. Bishop and Mabel Robson, moves the court for an order setting aside so much of the judgment in this case as is against them and relating to Parcel No. 481, and permitting them to defend and plead upon such terms as the court deems just, upon the following grounds:

On the 22nd day of October, 1957, a judgment was lodged with the clerk of this court and was entered

on the 1st day of November, 1957, in the above-entitled cause against this defendant and others; neither this defendant nor any of his brothers and sisters were ever personally served with any summons or complaint nor notified of the pendency of the action against them; on the 19th day of April, 1956, plaintiff filed a certificate for service by publication, and filed an amendment to its Third Amended Complaint in Condemnation, but defendants were never actually notified or aware of the same until after judgment, and they acted diligently to ascertain and protect their rights all as set forth in Leslie M. Siberell's affidavit filed in support of this Motion, and are now desirous of pleading to the complaint filed herein and make defense to the same.

The name of Lou R. Osborne appears in the pleadings as one having or claiming some kind of interest in Parcel 481.

Said defendants have employed experts to survey said mining property in the last past several months and desire to show that the value is greatly in excess of the \$100.00 awarded them in the judgment.

/s/ J. B. TIETZ,

Attorney for Defendant.

[Title of District Court and Cause.]

AFFIDAVIT OF DEFENDANT L. M. SIBERELL IN SUPPORT OF MOTION TO VACATE

State of California,
County of Los Angeles—ss.

Leslie M. Siberell, being first duly sworn, deposes:

1. That he is one of the heirs of Minnie V. Siberell, his mother, and is entitled to a 6/30th interest in her estate, by virtue of her will, duly probated in the Superior Court in and for the County of Los Angeles, and being docketed No. GLP 2237.

2. That his brothers and sisters are the only other heirs of said Minnie V. Siberell and that all of them are joining him in this Motion to Vacate Default Judgment.

3. That his mother was given a deed to said Parcel 481 (Birds' Eye Porphyry mining claims) by Ray L. Steven, the joint locator of said claims. The other joint locator is named Lou R. Osborne. Upon information and belief, said information principally being the disclaimer affidavit of Ray L. Steven dated December 16, 1957 (and hereinafter referred to in paragraph 4) affiant alleges that said Osborne had no beneficial interest in Parcel 481.

That said deed was recorded in the County Recorder's Office in San Bernardino County, California, in Book 1412, page 285, Official Records.

4. That at the time said Steven gave affiant's mother said deed he represented that he was the sole

owner of said property; that he subsequently, on December 23, 1957, made an affidavit to that effect, to wit: that he alone did all the assessment work and that no one else had any interest in said property. Said affidavit is on file in the Recorder's Office of San Bernardino County, California, in Book 4397, page 479 Official Records.

5. That on September 18, 1956, when said Ray L. Steven filed a Notice of Appearance in this action, he had no interest in said Parcel 481.

6. Affiant has searched the records of this case and found that service by publication was made in the counties of Inyo, San Bernardino and Kern, but not in the county of Los Angeles.

7. That neither affiant nor any of his brothers or sisters were ever served with summons or notice in this case nor did they learn of the existence of this case until July 22, 1957, when affiant received a telephone call from said Ray L. Steven: that the first official word he received was shortly after October 22, 1957, when the U. S. Attorney informed him by letter, signed by Assistant U. S. Attorney Joseph F. McPherson, that there had been an award of \$100.00 to the heirs of Minnie Siberell.

8. Said affiant promptly conferred with said United States Attorney in an effort to have the matter reopened and to have the award increased.

9. Said affiant promptly made efforts to ascertain the true value of said Parcel 481, as is shown by the letters in the files of this case that were made part of plaintiff's answer to the original Motion to Va-

cate; said letters show that affiant promptly endeavored to gain entrance to said Parcel 481 and that by persistence he did gain entrance and that as soon as he learned their true value he promptly filed his Motion to Vacate.

He employed competent mining geologists and assayers and made two trips with geologists to said Parcel 481, all within the last past several months, and can now offer expert evidence that the value of said Parcel 481 is greatly in excess of the \$100.00 awarded in said default judgment, to wit, that the property is worth the sum of \$100,000.00.

/s/ LESLIE M. SIBERELL.

Sworn to before me and signed in my presence by Leslie M. Siberell, personally known to me, this 2nd day of May, 1958.

[Seal] /s/ J. B. TIETZ.

Notary Public in and for Los
Angeles County, California.

Affidavit of service by mail attached.

[Endorsed]: Filed May 8, 1958.

[Title of District Court and Cause.]

MOTION AND STATEMENT IN OPPOSITION
TO MOTION OF DEFENDANT LESLIE M.
SIBERELL

(As to Parcel 481 Only)

Comes Now the plaintiff, United States of America, by Laughlin E. Waters, United States At-

torney, and Herbert M. Weiser, Assistant United States Attorney, Southern District of California, its attorneys of record herein, and moves and respectfully represents to the Court:

1. That the names and identity of defendant Siberell and any other persons claiming an interest under Minnie V. Siberell are not disclosed by the records, nor were they known to plaintiff at any time prior to the hearing on the question of compensation July 22 and 23, 1957.

2. The last publication for service upon unknown owners with reference to this parcel was on May 7, 1956, as appears in plaintiff's Certificate of Publication and Mailing filed herein May 22, 1956.

3. That plaintiff has done all that is required to complete service upon the persons who claim or may claim an interest in Parcel 481, and has presented competent evidence at the time of the hearing, July 22 and 23, 1957, to support the Court's findings as to the amount to be awarded as just compensation.

4. That no person claiming an interest in Parcel 481 had entered a notice of appearance or filed an answer, or otherwise appeared, until after the entry of the findings of fact and conclusions of law filed herein November 1, 1957.

5. That Title 28, U.S.C.A., Section 1655, has no applicability to this matter.

6. That contrary to defendant Siberell's affidavit, he had been in actual communication with the United States Attorney's Office concerning this mat-

ter as early as August 26, 1957, as appears in plaintiff's answer to defendant's motion to vacate filed herein April 3, 1958.

7. That defendant is not entitled to relief under Rule 60(b) F.R.C.P.; and that the Court may proceed to determine the various rights of persons to participate in the award without vacating or amending the judgment.

Wherefore, plaintiff moves this Court to deny defendant's motion and to adjudge that defendant Leslie M. Siberell and all other persons claiming an interest in or to Parcel 481 have been served and made party to this action and that the findings of fact and conclusions of law filed and entered herein November 1, 1957, are binding and conclusive upon them as to the question of the amount which represents the just compensation for the taking of this parcel.

Dated: This 16th day of May, 1958.

LAUGHLIN E. WATERS,
United States Attorney;

HERBERT M. WEISER,
Assistant United States
Attorney;

By /s/ HERBERT M. WEISER,
Attorneys for Plaintiff.

Affidavit of Mail attached.

[Endorsed]: Filed May 16, 1958.

[Title of District Court and Cause.]

AFFIDAVIT AND PASS IN SUPPORT
OF MOTION TO VACATE

Affidavit of John G. Freeman

State of Colorado,
County of El Paso—ss.

John G. Freeman, owner of the Nuclear Exploration Company, a resident of Los Angeles, California, being of lawful age, deposes and says:

The preliminary Mineral Examination conducted on Birds Eye Claims Numbers 1, 2 and 3 located in San Bernardino County, California, and belonging to Mr. L. M. Siberell of Los Angeles, California, showed through sampling and visual examination to be commercially valuable and worthy of further exploration;

That Assays of Surface Samples revealed Ore of commercial grade, and if the values continued underground, the estimated tonnage will run roughly ten thousand (10,000) tons; the estimated average surface values run approximately \$10.00 per ton;

That Core Drilling or any other appropriate exploratory mining method should be conducted on this property to ascertain further continuity of vein structure and ore;

That the Ore Values are not all confined to the Quartz Veins; that adjacent gouge type material in contact with the veins was found to be mineralized,

and in some places showed more value than the Quartz Veins;

That further underground exploration could reveal Ore Values of higher average than the \$10.00 surface value, and that it is again recommended that a competent Geologist or Mining Engineer conduct further exploratory work on this property.

That the affiant further saith not.

/s/ JOHN G. FREEMAN.

Subscribed and sworn to before me, a Notary Public in and for El Paso County, Colorado, on the 7th day of May, A.D. 1958.

[Seal] /s/ ETHEL M. FRITCH,
Notary Public.

U. S. Naval Ordnance Test Station
Inyokern
China Lake, California

Serial No. 1251

RECREATION PASS

To: Marine Guards Security Patrol, 6162 Annan Way, Los Angeles 42, Calif.

Pass the bearer, Leslie M. Siberell, ID No. , and passengers listed below into Argus Range from 0800, 2/1/58, to 1700, 2/1/58, for the purpose of taking samples from claims. Vehicle

type, '56 Ford pickup, license No. MRS 170, and passengers. Names and ID numbers, John G. Freeman, Harold McFadden.

1. Security Police personnel will call Head, Range Operations, 71395, or Head, Missile Range Div., 71504 for schedule of tests before allowing party to proceed into area. This authority is subject to revision or regulation by the Range Guards at any time firing tests render the area to be visited, dangerous, and is issued to the undersigned subject to the following provisions:

2. That he be personally responsible for all persons in his party and that the area be left in a clean and orderly manner.

3. That he assume all risks of damage or injury to himself and all members of his party.

4. That he assume all claims for death or injury to himself or any person in his party or loss, destruction, or damage to property which occurs in area visited, or traversed in entering or leaving station, and agrees to indemnity and save harmless the U. S. Government from and against any loss, expense, claims or demands to which the Government may be subjected as a result of such death, loss, destruction or damage.

5. Party shall consist of at least 2 vehicles, and shall provide itself with adequate gasoline, water, spare tires, tow rope, first aid kit, tools, shovel and food.

6. Departure and return shall be reported to Security Police, 71324.

7. All road and warning signs must be complied with.

8. Cameras must be declared to Security Police personnel.

9. Guns are prohibited without special permit to hunt predatory animals.

10. Emergency Shelter buildings are so marked. Other buildings must not be entered.

11. Mineral specimens may be taken. All other material, regardless of apparent value, must be left in place. Petroglyphs shall not be removed, mutilated or defaced.

12. Excavations are prohibited.

13. Old mine shafts, mud holes and baths are dangerous, keep out of them.

The undersigned has this 1st day of Feb., 1958, read all the above provisions, and in consideration of the permission herein granted, agrees thereto.

/s/ LESLIE M. SIBERELL.

Authorized and witnessed by:

/s/ V. A. CUMMINS,

Chief of Security Police.

[Endorsed]: Filed May 23, 1958.

United States District Court, Southern District of
California, Central Division

No. 3472—WB—Civil

UNITED STATES OF AMERICA,

Plaintiff,

vs.

529,533 ACRES OF LAND, MORE OR LESS, IN
THE COUNTIES OF KERN AND SAN
BERNARDINO, etc., et al.,

Defendants.

ORDER DENYING DEFENDANT'S
MOTION TO VACATE JUDGMENT

(As to Parcel 481)

This matter came on for hearing before the above-entitled Court on May 26, 1958. Appearing for the plaintiff, United States of America, were its attorneys of record, Laughlin E. Waters, United States Attorney, by Herbert M. Weiser, Assistant United States Attorney. Appearing for the defendants, Leslie M. Siberell, Olive D. Siberell, James P. Siberell, Martha E. Jones, Daisy M. Bishop and Mabel Robson, was their attorney of record, J. B. Tietz.

After hearing oral argument and in consideration of all the files and records contained herein, and good cause appearing therefor, it is hereby ordered that defendant's motion to vacate judgment filed herein May 8, 1958, be denied with prejudice.

Dated: This 4th day of June, 1958.

/s/ WM. B. BYRNE,
United States District Judge.

Presented by:

LAUGHLIN E. WATERS,
United States Attorney;

HERBERT M. WEISER,
Assistant United States
Attorney;

By /s/ HERBERT M. WEISER,
Attorneys for Plaintiff.

Affidavit of Service by Mail attached.

Lodged May 27, 1958.

[Endorsed]: Filed June 4, 1958.

Entered June 5, 1958.

[Title of District Court and Cause.]

NOTICE OF APPEAL

To Laughlin E. Waters, United States Attorney,
and Lou R. Osborne, 316 East 186th Street,
Gardena, California:

Notice is hereby given that Leslie M. Siberell, on behalf of himself and his co-defendants, Oliver D. Siberell, James P. Siberell, Martha E. Jones, Daisy M. Bishop, and Mabel Robson, hereby appeals to the United States Court of Appeals for the Ninth

Circuit from the Order entered on June 5, 1958, denying Motion of said defendants to vacate that portion of the judgment heretofore entered, to wit: The portion that concerned these defendants, namely, relating to Parcel 481, and denying said defendants any relief whatsoever.

Dated at Los Angeles this 28th day of July, 1958.

/s/ J. B. TIETZ,
Attorney for Appellants.

Affidavit of Service by Mail attached.

[Endorsed]: Filed July 28, 1958.

[Title of District Court and Cause.]

STATEMENT OF POINTS ON WHICH APPELLANT INTENDS TO RELY ON APPEAL

I.

The Court erred in denying defendants, Siberell, et al., an order partially setting aside the judgment.

II.

The Court erred in refusing to permit defendants, Siberell, et al., permission to answer and defend on Parcel 481.

/s/ J. B. TIETZ,
Attorneys for Appellants.

Affidavit of Service by Mail attached.

[Endorsed]: Filed October 2, 1958.

[Title of District Court and Cause.]

DOCKET ENTRIES

4/19/56—Fld pltfs certif for svce by publ. Fld amendmt to 3rd amd compl in condemn.

4/20/56—Fld 3 cc ltrs fr US Atty to Bakersfield Californian, San Bernardino Evening Telegram & The Bishop Inyo Register re affid serv by publ of not of flg compl in condemnation.

6/16/56—Fld cert of publication & mlg. Fld affid of svce by mail of not of flg compl amended complaints & amendmnt to 3rd amended compl.

5/22/56—Fld affid of svce by mail of not of flg compl in condem, amd compls in condem & amdmt to 3rd amd compl in condem. Fld certif of publ & mlg. Fld affid of svce by mail upon defts hvg interest in land in Kern Co. Fld certif of publ & mlg of not in Bakersfield, California.

* * *

7/12/57—Fld notice trial set for 7/22/57, 2 p.m.

* * *

7/22/57—Ent procs et trial as to parcs (Kern Co. Fee Parcels) 4, 26, 37, 51, 60, 92, 94, 96, 108, 150, 160A, 170, 171, 200, 206, 207, 208, 209A, 210, 275, 230, 245, 252, 302, 324, 335, 336 (Inyo Co. Fee parcels) 263, 269, 272, 277, 279, 280, 286, 417, 418, 458, 459, 460, 461, 462, 488, 489,

499, 500, 501, 554, 555, 556, 557, 558, 559, 560, 561 (San Bernardino Co. Mining claims) Parcel 412, 467, 477, 478, 479, 480, 481, 509. Ent ord contd to 7/23/57, 9:45 a.m. for fur trial. Fld stip for judg as to parcels 417 & 501, White Elephant Nos. 1 and 2 Placer Mining Claims and parcels 418 & 499 World Beater Nos. 1 and 2 Plamer Mining Claims.

7/23/57—Ent procs fur ct trial as to (Kern Co. Fee parcels 4, 26, 37, 60, 92, 94, 96, 108, 150, 160A, 170, 171, 200, 206, 207, 208, 209A, 275, 230, 245, 252, 302, 324, 335, 336 (Inyo Co. Fee parcels 263, 269, 272, 279, 280, 286, 417, 418, 458, 459, 460, 461, 462, 488, 489, 499, 500, 501, 554, 555, 556, 557, 558, 559, 560, 561 (San Bernardino Co. Mining Claims) 412, 467, 477, 478, 479, 480, 481, 509. Ent ord that just compen for tkg of various parcels be as follows: Kern Co. Fee parcels, Parcel 335, in amt \$50.00; Parcel 336 in amt \$50.00. Inyo Co. Fee parcels, parcel 28, in amt \$5.00; Parcel 488, Iron Chief Lodge in amt \$2,716. Parcel 489, Iron Mask Lode in amt \$2,716.

* * *

10/22/57—Lodged plfs prop finds fact, concls law & jgmt & decree fixg compens & determ absence of interest of cert parties as to

cert parties as to cert parcels, Fld affid of mailing.

11/ 1/57—Fld finds fact, concl law & judg condem parcels land, vesting title certain parcels in USA, & fixg compens for cert parcels to cert defts, all as shown below. Fxg compens for parc 412 in sum \$1,500.00 to Oliver Hopkins, 481 in sum \$100.00 to Raymond L. Steven, et al.; 488 in sum \$2,716.00 to John T. McCord, et al.; 489 in sum \$2,716.00 to Chester P. Smith, et al.; 500 in sum \$1,490.00 to Gerald C. Hidecker; 554, 555, 556 & 557 in sum \$100.00 for each parc to W. J. Van Valkenburgh, et al.; 588, 559, 560 & 561 in sum \$100.00 for each parc to W. J. Van Valkenburgh, et al.; 280 in sum \$5.00 to State of Calif.; 335 in sum \$50.00 to Dallas B. Lanterman, et al.; 336 in sum \$50.00 to Laurette H. Evans; 417, 418, 499 & 501 in sum \$17,000.00 to Earl R. Lillie, et al.; that title to parcs 60, 269, 272, 277 was vested in USA as of 5/8/46, fxg date of vesting title to parcs 4, 26, 51, 92, 94, 96, 108, 150, 170, 171, 200, 230, 245, 252, 263, 279, 286, 302, 324, 458, 459, 460, 461, 462, 467, 477, 478, 479, 480 & 509 in USA, that USA has unencumbered title to Parc 160A, dismiss parc 275 from proceeds, etc. (Ent 11/1/57.)

12/17/57—Fld disclaimer Raymond L. Steven, etc., as to parcel 481 (Bird's Eye prophry Lode) only.

* * *

1/ 7/58—Fld disclaimer C. I. Christensen Par 481 (Birds Eye Porphyry Lode Only).

* * *

3/25/58—Fld decree vesting title follow parcs in USA as of date shown: Parc 22, 6/30/44; Parc 30, 5/16/44; Parc 30-A, 5/16/44, and Parc 61, 4/5/45, etc. (Ent 3/26/58.) Fld mot defts L. M. Siberell, et al., to vacate judgt as to parcel 481 with not mot retble 4/7/58 & affid in suppt.

* * *

4/ 3/58—Fld pltfs ans to defts mot to vacate & affid in suppt as to parcel 481.

4/ 7/58—Ent procs hrg mot deft Leslie M. Siberell for an ord partially vacatg judgmt htf rendered in Par 481 & ent ord denyg mot w/o prej.

* * *

5/ 8/58—Fld mot defts Leslie M. Siberell, etc., to vacate judgt deft & permit filing of Answer as to parcel 481 with not mot retble 5/26/58, affids pts & auths, etc.

5/16/58—Fld Mot & statmt in oppos to mot of deft Leslie M. Siberell & memo of pts

& auths in suppt thereof as to parc 481 only.

* * *

- 5/22/58—Fld pltfs supplemental state in opposition to defts mot to vacate.
- 5/23/58—Fld affid John G. Freeman & pass in suppt mot to vacate & fld affid ser.
- 5/26/58—Ent procs hrg mot deft Leslie M. Siberell for ord partially vacating judg htf rendered, namely, Par 481 & ent ord denying mot. Counsel for Govt is directed to prepare, serv & lodge formal ord purs to Local Rule 7.
- 5/27/58—Lodged ord denying defts mot to vacate judgt parcel 481.
- 6/ 4/58—Fld ord deny mot of defts Leslie M. Siberell, et al., to vacate judg re parc 481 fld 5/8/58, with prej. (Ent 6/5/58 & not attys.) Fld amended appear Gerald C. Hidecker.
- 7/28/58—Fld not appeal Leslie M., Oliver D. & James P. Siberatt, Martha E. Jones, Daisy M. Bishop & Mabel Robson with affid serv by mail.
- 8/29/58—Fld desig rec on appeal Mabel Robson, Leslie M. Siberell, Oliver D. Siberell, etc.
- 9/ 2/58—Fld ord time to docket record on appeal extended to 10/26/58.
- 9/ 5/58—Fld desig of record on appeal by appellee as to parcel 481 only.

10 2/58—Fld stmt pts appellants Siberell, etc., intends to reply on appeal.

10/ 2/58—Issd & fwd to CA transc rec on appeal Parcel 481, 4 pp at .40c, \$1.60.

[Title of District Court and Cause.]

CERTIFICATE BY CLERK

I, John A. Childress, Clerk of the above-entitled Court, hereby certify that the items listed below constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit, in the above-entitled matter:

A. The foregoing pages numbered 1 to 40, inclusive, containing the original:

Answer to Defendant's Motion to Vacate and Affidavit in support thereof (as to Parcel 481).

Notice of Motion, Motion to Vacate, Affidavits in support, etc.

Motion and Statement in opposition to Motion of Defendant Leslie M. Siberell, etc.

Affidavit and Pass in Support of Motion to Vacate.

Order Denying Defendant's Motion to Vacate Judgment as to Parcel 481.

Notice of Appeal.

Designation of Record (Appellants).

Extension of time to prepare and docket appeal.

Designation of Record (Appellee).

Statement of Points.

I further certify that my fee for preparing the foregoing record, amounting \$1.60, has been paid by appellant.

Dated: October 2, 1958.

[Seal] JOHN A. CHILDRESS,
Clerk;

By /s/ WM. A. WHITE,
Deputy Clerk.

[Title of District Court and Cause.]

CERTIFICATE BY CLERK

I, John A. Childress, Clerk of the above-entitled Court, hereby certify that the items listed below constitute the Supplemental transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit, in the above-entitled matter:

A. The foregoing pages numbered 1 to 49, inclusive, containing the original:

Amendment to Third Amended Complaint in
Condemnation, filed 4/19/56.

Certificate for Service by Publication, filed
4/19/56.

Certificate of Publication and Mailing, filed
5/22/56.

Affidavit of Mailing, filed 10/2/57.

Findings of Fact, Conclusion of Law, and
Judgment and Decree, etc., entered 11/1/57.

Suggestion of Plaintiff-Appellee to complete

Designation of Record on Appeal to supply omissions, and Order thereon (as to Parcel 481 only).

B. Copy of Docket entries.

I further certify that my fee for preparing the foregoing record, amounting \$1.20, has not been paid by appellee.

Dated: November 13, 1958.

[Seal] JOHN A. CHILDRESS,
Clerk;

By /s/ WM. A. WHITE,
Deputy Clerk.

[Endorsed]: No. 16215. United States Court of Appeals for the Ninth Circuit. Leslie M. Siberell, on Behalf of Himself and His Co-defendants, Oliver D. Siberell, James P. Siberell, Martha E. Jones, Daisy M. Bishop and Mabel Robson, Appellants, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed: October 3, 1958.

Docketed: October 9, 1958.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the
Ninth Circuit.

